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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-203991.2

DATE: April 5, 1982

MATTER OF: Morse Typewriter Co., Inc.

DIGEST:

1. Where agency initially adopts interpretation favorable to protester, a protest filed within 10 working days of protester learning of new unfavorable agency interpretation is timely.
2. Low bidder which took no exception to requirement that typewriter be furnished with "manufacturer's standard elite type" submitted responsive bid and where procuring activity is satisfied acceptable item will be furnished, protest that bidder had to furnish "standard elite type," thereby ignoring word "manufacturer's" in specification, is denied.

Morse Typewriter Co., Inc. (Morse), protests the General Services Administration's (GSA) proposed award to International Typewriter Exchange (ITE), the low bidder under invitation for bids (IFB) No. FCGE-Y6-75193-A for manual typewriters. Morse contends that ITE's commercial product does not meet the Commercial Item Description (CID) (i.e., specifications) requirement that "the typewriter shall be equipped with the manufacturer's standard elite type style." Morse argues that ITE does not have a standard elite type style to offer because the standard definition of elite is 12 letters per inch and the type style ITE furnishes under the name elite consists of only 11.4 letters per inch.

We deny in part and dismiss in part the protest.

Prior to the current protest, ITE protested, under the same solicitation, against GSA's negative preaward survey of ITE. The preaward survey team concluded that ITE's typewriters did not conform to the CID requirements and found ITE incapable of performing the contract.

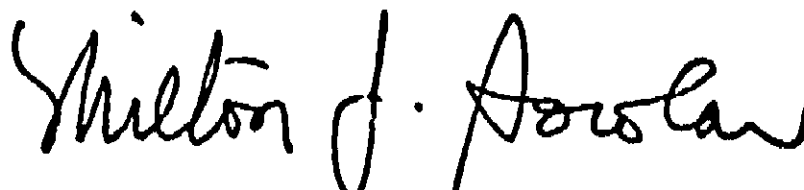
However, following ITE's protest on November 3, 1981, the preaward survey team concluded ITE did meet the requirement by furnishing its standard elite type. Based on this action, GSA reversed its negative determination of ITE's responsibility whereupon ITE withdrew its protest. Meanwhile, Morse, on September 30, 1981, filed a timely protest of GSA's further consideration of ITE's typewriter. While ITE contends Morse's protest is untimely because it was filed several months after bid opening, we have held that protester need not file a "defensive" protest where the agency position is initially favorable to protester, as here. Carco Electronics, B-186747, March 9, 1977, 77-1 CPD 172.

GSA takes the position that the phrase "manufacturer's standard elite type style" requires only that the typewriter be the manufacturer's elite type style and no other requirements were specified with regard to style of print. On this basis, GSA concluded that when it was verified that the ITE typewriter to be supplied conformed to the manufacturer's own drawings of its version of an elite type style typewriter, the CID requirement was satisfied.

ITE took no exception to the IFB requirements and, therefore, its bid is responsive. GSA has concluded that its specifications, as written, do not require 12 letters per inch, but merely the manufacturer's standard elite type, which, based on the information gathered by the preaward survey team, is what ITE will furnish. We do not find this interpretation to be unreasonable. To reach Morse's interpretation of the specifications, one would have to ignore the word "manufacturer's," which modifies standard elite. This basis of protest is denied.

While Morse has also raised questions regarding the service ability of these typewriters furnished under prior contracts, this relates to the affirmative responsibility determination of the bidder made by GSA, which is the type of determination no longer reviewed by our Office. Environmental Laboratory of Fayetteville, Inc., B-205593, December 7, 1981, 81-2 CPD 445. This aspect of the protest is dismissed.

Accordingly, the protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States